

THE LIBERALISM OF LOUIS D. BRANDEIS

The Father of the New Deal

SOLOMON F. BLOOM

NUMBER has always had a fascination for man. Pythagoras said all things were numbers and proceeded to reduce the world to arithmetical arrangements. Many a mystic has tried to forge a numerical key to the mystery of the universe. Quite paradoxically, a certain class of rugged men who pride themselves on their down-to-earth common sense are also subject to this high conceit. Indeed, a whole branch of liberal reform—though, I hasten to add, by no means traditional liberalism in general—has been persuaded that social problems may be solved by a kind of dead reckoning. The most notable representative of this school of thought, the English Utilitarian Jeremy Bentham, went to the length of computing happiness itself. He devised a "calculus of felicity," in which constituent joys and countervailing sorrows could be added, subtracted, and multiplied, and a reliable balance struck.

The attraction that number has for mystics shows that yielding to it is not always the mark of a superficial heart. Among reforming economists and politicians, the devotees of number have often been men particularly troubled by the fact of misery and injustice.

REFORMER, corporation lawyer, Zionist, Justice of the Supreme Court, and one of the most outstanding liberals of his generation, Louis D. Brandeis (1856-1941) lived in the center of the public stage for decades. Yet it was quite generally recognized that the particular quality of his personality and thought escaped the customary labels. It has been a continuing challenge to try to discover the hidden springs of his career, and the essential philosophy of the man many have called the father of the New Deal. SOLOMON F. BLOOM, who offers this latest appraisal, is professor of history at Brooklyn College and has been a frequent contributor to COMMENTARY. Born in Rumania in 1903, he came to this country in 1920, attended City College, and earned his doctorate at Columbia.

Louis D. Brandeis, reformer, lawyer, Associate Justice of the United States Supreme Court, and one of the most influential liberals of the last generation, was such a devotee.

Brandeis' extraordinary career ranged widely and colorfully from a long and clever campaign against the financial barons, a war on monopoly and "bigness," staunch pioneering of social legislation, to outstanding contributions to the progressive movements that bear the names of Theodore Roosevelt and Woodrow Wilson and might almost as justly bear his own, and finally to a climax of Zionist and judicial leadership.

But while his career has been assessed* with some adequacy, the man himself has not. He was hardly, to be sure, an easy man to know. A certain inscrutability hung about him. His enemies called it hauteur and even contempt for his fellow-men, and his friends called it reserve and insistence on privacy. Both sensed a distance. Mason observes that even those who came to know him well "discovered an inner sphere of personality vigilantly guarded, which few if any could penetrate; thinking they were close to him, they soon found as they approached the inner man they could go no further." Justice Learned Hand speaks of Brandeis' "fiery nature" but adds that for the most part the fire lay "buried beneath an iron control."

If Brandeis possessed a fundamental outlook that underlay all others he was not aware of it himself. "I have no general philosophy," he would say. "All my life I have thought only in connection with the facts that came before me. . . . We need not so much reason as to see and understand

* Alfred Lief, *Brandeis: The Personal History of an American Ideal* (New York, 1936); Jacob de Haas, *Louis D. Brandeis* (New York, 1929). These biographies have been supplemented, and in some degree supplanted by Alpheus T. Mason's *Brandeis: A Free Man's Life* (Viking, New York, 1946). This elaborate work of 700-odd pages is authorized by the late Justice.

facts and conditions." He seemed to doubt the value of a philosophy altogether. "I think reason which leaps far ahead does very little in life." Or, "sometimes it is better not to try to see the unknowable future." Style, which so frequently gives away the man, effectively concealed Brandeis. He wrote a dry, factual, and even uncouth prose stripped of all sinuosity, allusion, and penumbra. And he shut the last door of self-betrayal by avoiding discussions of philosophical or religious matters.

We may take it perhaps that Brandeis was very much a man of this world, the kind of man who, as Lief notices, spurns metaphysics. But if we cannot reach the inmost source of his drive or touch the mainspring of his character, we have at least the one clue that practical men most often leave behind them: their *modus operandi*. If we follow this clue we may strike a distinguishing characteristic, not of Brandeis alone, but of the whole school of which he was a notable figure. And in a day that cries out for a reappraisal of liberalism, it is well to refresh our view of one of its most fruitful branches.

SPEAKING culturally, Brandeis' *modus operandi* was an inheritance. His family belonged to that sizable group of middle-class immigrants who flocked to the United States from Germany and Austria a century ago and played a considerable role in the commercial upbuilding of the mid-West and the Southern borderland as well as the East. A strain of cautious economy ran through the breed. The story is told that in his high-school club, young Brandeis paid the most particular attention to the treasurer's accounts. From the beginning and throughout, he showed a high aptitude for mathematics, or, I should rather say, for practical figures. De Haas recalled that even in later life Brandeis could recite prices of staple commodities and the important stock exchange listings for decades.

This trait made itself felt in his law work. Brandeis had hesitated but briefly before rejecting the career of teaching and scholarship that his unique record at Harvard Law School suggested. "The love of a struggle and a little ambition is given [to my sons] as their maternal inheritance," wrote Adolph Brandeis, who sensed his son's turbulent energy and knew he wanted to try his "skill tilting the world." Indeed, Louis was restless and battle-hungry, and the "wrangling

of the bar" attracted him. He was passionately intent to succeed and to distinguish himself in no mean measure. And in Boston of the 80's success meant not only ample riches but the prestige that comes from an unusual public career and social influence.

The stakes were high and the costs quite inflationary. Only his keener and swifter abilities distinguished young Brandeis from the ordinary practitioner at the bar. The client always came first, and truth and justice were left to shift for themselves. I am afraid that his treatment of his juniors early in the career of his law firm in Boston was autocratic, and his sudden defense of monopoly during his triple connection with the United Shoe Machinery Company as investor, director, and counsel, was unconscionable. Brandeis insisted for a long time that *his* was a "good" monopoly. Like all men who stamp their feet in self-conscious assertion of power he was not spared the price of lapses from consistency and good taste.

Brandeis specialized in commercial and corporation practice and planned his success with the care of a strategist. He drew up "incredibly long lists of people he had met, who had introduced them to him, where he had met them, and, occasionally, what they were like." "Cultivate the society of men—particularly men of affairs," this Poor Richard advised a younger colleague. "Lose no opportunity of becoming acquainted with men, of learning to feel instinctively their motivation, of familiarizing yourself with their personal and business habits; use your abilities in making opportunities to do this. . . . Impress them with your superior knowledge." In these early years Brandeis spoke habitually as a conscious representative of capitalism. In opposing an unfair franchise for the Boston Elevated Railway Company in 1897, he remarked that it would result "in great injustice to the people of Massachusetts, and eventually great injustice to the capitalist classes whom you [the state legislators] are now representing, and with whom I, as well as you, are in close connection."

More distinctive of Brandeis was his inevitable prescience in mastering the methods and techniques of business. Louis E. Kirstein observed that he was a better businessman than most of his business clients. He mast-

ered—and this was much to his taste as well as quite original—bookkeeping and accounting. “Know bookkeeping, the universal language of business,” he counseled, echoing, in his own way, Marx’s description of that science as “the control and abstract joinder of the process of production.” Bentham, meet Hegel. . . . And, looking beyond Bentham to Turgot, Brandeis descended to the simplification: “Accountancy—that is government.”

An important practice quickly brought him the first desideratum of success. By 1907 he had amassed his first million dollars, and by 1916, when he was appointed to the highest bench in the country, he had amassed his second. He made only “absolutely safe investments intended to be permanent and yielding a low rate of return,” in the best railroad, utility, municipal, and government bonds. Imperceptibly, by the time of his death, the estate surpassed the third million.

But his consumption was conspicuously frugal. Although his income over many decades hovered around \$100,000 a year, he lived on one-tenth of it. His summer home on Cape Cod was valued at \$9,450. “Buy nothing that is not irresistibly handsome,” he advised with great good sense, and added: “Buy nothing which your grandchildren cannot use.” His puritanism was disturbed by the marble ostentation of the new Supreme Court building in Washington. Lief reports that he would tear the folded court stationery in half and use only one piece at a time. Between 1905 and 1939 he gave to Jewish charities and to Zionism more than \$600,000; another half million to friends and relations; most of his estate went to Zionism and other public causes. Yet the psychological motif of his wealth was not disbursement. “The great happiness in life,” he said, “is not to donate, but to serve.” Mason comments that “it was his time and his brains—the harder gifts—that he gave to good causes rather than his cash.”

It was hardly his fault, then, but merely the effect of a soundly budgeted independence that he died a multi-millionaire. It is to underline his conception of independence—a conception that speaks volumes for his time and place—that I have mentioned these figures. “I don’t want money or property most. I want to be free.” And he measured freedom by the highest standards available; he would be no less free than the richest. Lief happily

remarks that Brandeis wanted “a million-dollar grip on life.”

INDEED, to the type of liberalism that Brandeis represented, the most valuable treasure was not money but time, time for effort. If he invested safely it was so he would not have to “take time off thinking about it.” He counted it as his greatest luxury to be able to “invest” his “surplus effort”—so he put it, in characteristic phrasing—in public causes, without compensation. We are in the presence here of Sir Isaac Newton’s account of time as an external reality with an existence of its own, an “absolute, free, and mathematical value.” In this old psychology, time is something that we “have” and “own.” It is our greatest *calculable* treasure. The proper allocation and exploitation of time becomes the first premise of a rewarding life. Brandeis’ day “ran according to steady routine, in which hours, even minutes, were carefully scheduled,” writes Mason. “By planning, personal efficiency could be doubled or trebled. ‘Between what we do and what we are capable of doing there is a difference of 100 per cent,’ he maintained.” The whole year was scheduled: “I soon learned I could do twelve months’ work in eleven but not in twelve.” If he did not feel fit, he did not trust his judgment! We are reminded of another distinguished liberal, the British Prime Minister, William E. Gladstone, who was careful to use the minutest interstices of leisure—he always carried a classic in his pocket as insurance against the unexpected idle moment—and who promised his son that “the thrift of time” would yield him a “usury of profit.” The thrift of time, and the eye to figures, not to mention a fertile mental mechanism, brought Brandeis a large harvest. Legal briefs based on painstaking analysis of economic facts and social conditions rather than on musty legal precedent became, as everyone knows, Brandeis’ peculiar and creative contribution to his craft. On such issues, for example, as shorter hours or night work for women, which he fought before state and federal courts, he would submit a few pages of law and several hundred of the “world’s experience” with the moral, physiological, and social effects of overwork. The “experience” consisted of thousands of abstracts and summaries of in-

vestigations, factory inspectors' reports, medical treatises, and social studies in every country and in every language. The courts finally yielded, reluctantly, to his novel "argument": the United States Supreme Court declared—with what in any field but the law would be regarded as an enormity of naivety—that it would take "official cognizance of all matters of general knowledge."

In the long struggle with the then powerful New Haven Railroad and with J. P. Morgan, who tried to monopolize the rails of New England, the accountant's eye spied the enemy's Achilles' heel. It appears that the railroad's financial statement for 1907 was cast in heterodox form: the item of maintenance was omitted from the debit side and charged to profit and loss, instead of to operating expenses as sound bookkeeping required. The New Haven paid its traditional eight per cent, but had the accounts been done properly they would have shown that the profits were more than a million dollars short of the sum needed for that vainglorious dividend. Brandeis explained this in a loud voice, but the financial manipulators already knew it and the investors trusted them. A few years later the railroad was very bankrupt and the bankers who had mulcted it quite superfluously solvent. "My special field of knowledge," remarked Brandeis, "is figures."

Again, his deftest stroke in the famous Taft-Ballinger-Pinchot controversy over the conservation of natural resources was strikingly arithmetical, or rather chronometric. President Taft had dismissed a critic from the public service and cited a report by Attorney General Wickersham in justification. It escaped all eyes but Brandeis' that two dates mentioned by the President made it appear that Wickersham had turned out a report of half a million words in a week. Mason remarks coyly that "Brandeis knew only one man who could have done that job in that time, and his name was not Wickersham." By studying his movements for that week, consulting railroad time tables and newspaper accounts, Brandeis demonstrated that Wickersham could not have done it and so exposed the dismissal as political.

BRANDEIS' interest in reform developed rather slowly. His early excursions in this field were eminently respectable and

innocuous—liquor, civil service, free trade. The turn apparently began about 1890, when he married into the liberal-minded Goldmark family and reacted to the shock of the Homestead steel strike and the ruthless violence perpetrated on the workers. Certainly he showed a general restlessness. His successes in the law came ever easier; perhaps he craved fiercer contentions and worthier contenders. The age was breeding business Goliaths and swashbucklers, proud magnates who needed humbling. He plunged into combat with the strongest figures of his time.

Here, too, he showed a strong predisposition for order and reckoning. Hence his advocacy of scientific management. The problems business had created—and few men had been so effective in exposing them—business itself could mend by rationalizing itself. He took the engineer's view of business as "an intricate machine." The goddess of reason revenged itself. Everywhere else the man of common sense, Brandeis became here the high rationalist. "The distinction between the mechanic and the engineer is that the mechanic cuts and tries and works by formula based on empiricism; the engineer calculates and plans with absolute certainty of the accomplishment of the final result in accordance with his plans which are based ultimately on fundamental truths and natural science."

Brandeis aroused enormous interest in scientific management when he brought the testimony of industrial engineers before the Interstate Commerce Commission to support his contention that the railroads could save a million dollars a day by applying the methods devised by Frederick W. Taylor for time and motion studies and analysis of unit costs. The savings, incidentally, would make unnecessary the higher rates the railroads were asking for. His enthusiasm was aflame, he piled argument on argument, even pointing to the value of efficient preparation in Prussia's victory over France in 1871 and Japan's over Russia in 1904.

"Taylorism" was of course anathema to labor leaders and radicals, who saw in it only a highfalutin expression for murderous sweating and speed-up. But Brandeis insisted that "when Taylor, with infinite patience and genius, discovered the laws by which a given quantity of pig iron might be loaded

into a car . . . he was protecting his workmen, not exhausting them." The introduction of such methods offered to labor its "greatest opportunity." A more scientific organization of production would not only eliminate waste and increase profits, making possible higher wages, but would stimulate worker-management cooperation. It would raise morale by emphasizing workmanlike achievement. "Men would be led, not driven."

BRANDEIS had made a useful suggestion and betrayed a fundamental blindness. He sensed correctly that labor and radical leadership had shown too little concern with the processes of production. It is only lately that the more advanced unions have begun to study and recommend more efficient methods in their industries. Marxism itself was long guilty of the same neglect. But management and ownership, which stood closer to the controls, were much more to blame for waste and inefficiency. This Brandeis of course perceived, yet his solution implied that management would not only show a greater intelligence but might also subordinate profit-mindedness to the objective demands of scientific production. Believing anyway in "betterment within the broad lines of existing institutions," he proposed with fetching simplicity that business become a liberal profession, governed by recognized ideals and standards, like medicine, or, say, the younger calling, agronomy.

In *Business—A Profession*, a commencement oration at Brown University in 1912, Brandeis soared to the hope that business—and under that term he included manufacturing, transportation, and finance as well as merchandising—should require a preliminary intellectual training, dedicate itself to altruistic service, pool the best techniques and "secrets," and encourage excellent performance for its own sake. He assured the ambitious that this would still leave room for distinction, and for unusual returns, just as was the case in other professions. Brandeis did nothing by halves. He went on to proclaim that as the new profession developed, "the great industrial and social problems expressed in the present social unrest will one by one find solution." No wonder he remarked that "business is one of the noblest and most promising of all professions."

How ridiculous was the expectation that schools of business might help to solve the economic crisis—for that was what his suggestion boiled down to—became clear even to business economists. In introducing the second edition of *Business—A Profession*, Professor James C. Bonbright of the School of Business of Columbia University observed that between the First World War and the fateful year of 1929, such schools had increased in number, and business morality had deteriorated.

Brandeis' opposition to big business derived from a certain view of human nature and an ingrained sense of the proportion of things. "Nobody can look after a business as well as the owner, but as a business grows in size the man at the controls has a diminishing knowledge of the facts" and therefore little basis for judgment. Ability is rare and so is self-knowledge. "Few men are bad, but many are weak." If we are to cut our coat to human cloth, we must keep the unit of enterprise small. In this rather pessimistic view, Brandeis was closer to Bentham than to the French Revolutionary liberals, whose faith in humanity was sanguine and adventurous. An underlying shadow of distrust helps to explain the curious paradox that the economic liberal school, which places an extreme stress upon individual freedom in trade, industry, and society, yet implies a need for external organization or arrangement—not necessarily political—which might discipline men and protect them from their own weaknesses and passions. Brandeis put it strikingly, even if somewhat condescendingly, when he said that "it is up to us to create conditions which do not tax their character too much."

HE SAW, too, that a certain disproportion prevailed between an indefinite accumulation of wealth and the continuance of political democracy. How long would the many, who formally command sovereignty, submit to the invidiousness and the poverty that accompany "industrial despotism"? But Brandeis wanted to apply a "brake on democracy" as well as on runaway capitalism. Socialism he regarded as quite undesirable, as undesirable in fact as immoderate capitalism, of which it seemed to him the product and obverse. The excesses of one bred the vagaries of the other. He preferred voluntary

cooperation between freely associated capitalists and freely associated workmen.

Brandeis' sympathy for the underdog was based therefore not on Marxism or Veblenism, nor even on populism, but on Bentham's principle of "the greatest good for the greatest number," which proceeds from the premise of things as they are. A proper distribution of fairness could hardly leave the mass of workers to the side. Collective bargaining, to save property from its own abuses and those of socialism; the "preferential shop," in which the union is strong but nobody is *forced* to join, for "men must have industrial liberty as well as good wages"; the incorporation of unions to insure public responsibility; the renunciation of violence and sabotage to insure order and efficiency; the cooperation of labor unions with "unions" of employers in the solution of common problems, for their problems were essentially mutual—such, in brief, was Brandeis' program for a more or less automatic Utopia. Industrial despotism would be succeeded by profit sharing, then by sharing of responsibility. That seems to have been his goal.

The emphasis on voluntary cooperation made Brandeis unsympathetic to those aspects of the New Deal which led to planning and regulation from the outside. In many ways the New Deal was his own spiritual child. Closer regulation of banking, the stock exchange, and holding companies; the warmer protection of the investor; the separation of investment from deposit banking; the recognition of labor's bargaining rights; the establishment of social insurance; and the occasional forays of Franklin D. Roosevelt and his followers into the tempting field of limitation of the size, and even income, of corporate enterprise—all these flowed smoothly from Brandeis' views. The efforts at fact-finding and economic enlightenment pleased him. He had always been in favor of experimental stations and the gathering and distribution of trade information on any scale whatever: for "science," nothing was too big.

On the other hand, Brandeis did not like a government too busy, too inquisitive, and too fat with delegated powers. There was a danger that the New Deal might kill bigness in business and become itself "big" in the process. His distrust of the exaggerated scale applied to political life as well as to

economic. In this distrust Brandeis stood four-square on the tradition of liberalism.

THIS tradition he represented brilliantly on the Supreme Court, along with his older colleague Oliver Wendell Holmes, but in his own peculiar way. He would balance the power of labor and capital. Hence he defended unionization in defiance of "yellow dog" contracts imposed by employers, and of court injunctions which protected such contracts. Liberty of contract begins, as Holmes remarked, in an "equality of position between the parties" (*Hitchman Coal & Coke Co. v. Mitchell*, 1917). On the same principle, Brandeis defended the large-scale labor organization as a foil to the large-scale concentration of capital when that proved to be an accomplished fact (*Duplex Printing Co. v. Deering*, 1921). The turning of the Sherman Anti-Trust Act, originally passed to prevent business monopoly, into a weapon against the activities of labor, particularly strikes, seemed to him outrageous. He told the Court, briefly, that the injunction against refusal to work reminded him of involuntary servitude (*Bedford Cut Stone v. Journeymen Cutters' Association*, 1927). For a long time Brandeis fought against the conservative Court's rejection of state legislation for minimum wages. The individual state, he argued, must be left free to deal with dependency and with that "demoralization of its citizenry and social unrest which attend destitution and denial of opportunity" (*New York Central Railroad v. Winfield*, 1917). Again together with Holmes, he devised the formula of "a clear and present danger" of an actual assault upon the state as the only justification for restraining free speech (*Schenck v. US*, 1919).

His mightiest strokes were directed against capitalist monopoly. Repeatedly he defended the right of states to limit the power of corporations. It seemed to him right that Pennsylvania should tax cab corporations, and Florida chain stores, more heavily than they did individual owners or partners (*Quaker City Cab Co. v. Pa.*, 1928; *Leggett v. Lee*, 1933). The monopolistic corporation was a modern mortmain; through sheer size it dominated not only the consumer but the citizen and the state itself; within the corporation, power was slipping into the hands

of the few manipulators at the top; the "feudal" system was back again. "The true prosperity of our past," he wrote with passion and nostalgia, "came not from big business but through the courage, the energy, and the resourcefulness of small men."

Love of order prevented Brandeis from stopping at mere unrestrained competition. When the conservative Court denounced as monopolistic the pooling of information among the members of a trade association that controlled nearly one-third of the lumber industry, and pointed to the fact that an agreement to curtail production had pushed prices up, Brandeis suddenly tacked between monopoly and knowledge.

"The cooperation which is incident to this plan does not suppress competition. On the contrary, it tends to promote all in competition which is desirable. By substituting knowledge for ignorance, rumor, guess, and suspicion, it tends also to substitute research and reasoning for gambling and piracy, without closing the door to adventure, or lessening the value of prophetic wisdom. In making such knowledge available to the smallest concern it creates among producers equality of opportunity. In making it available to purchasers and the general public, it does all that can actually be done to protect the community from extortion."

Brandeis seemed to be afraid, too, that if businesses could not combine for information they would simply consolidate into larger units. He, no less than they, was confessing that simple competition was dead. The dilemma landed him almost in the arms of Marx. During the depression of the 30's, Oklahoma attempted to prevent overproduction and the collapse of prices in the ice industry by licensing and controlling the business as though it were a public utility. It was again the turn of the conservatives to cry monopoly and state socialism. Brandeis answered that society faced new problems and must be allowed to experiment to find solutions which, evidently, he had not (*New State Ice Co. v. Liebmann*, 1932).

"Some people believe that the existing conditions threaten even the stability of the capitalistic system. Economists are searching for the causes of this disorder and are re-examining the bases of our industrial structure. Businessmen are seeking possible remedies. Most of them realize that failure

to distribute widely the profits of industry has been a prime cause of our present plight. But rightly or wrongly, many persons think that one of the major contributing causes has been unbridled competition. Increasingly, doubt is expressed whether it is economically wise, or morally right, that men should be permitted to add to the producing facilities of an industry which is already suffering from overcapacity. . . . All agree that irregularity in employment—the greatest of our evils—cannot be overcome unless production and consumption are more nearly balanced. Many insist there must be some form of economic control. . . . There must be power in the states and the nation to remold, through experimentation, our economic practices and institutions to meet changing social and economic needs. . . ."

BRANDEIS' belated conversion to Zionism presents a baffling problem. Could we but find it, the key to the essential man lies here, if anywhere. "A typical assimilationist," as Mason describes him accurately, Brandeis became a fervent Zionist at the age of fifty-six. "Several members of the Brandeis and Goldmark families had married Gentiles," and his relatives did not share his new passion. "Even Alfred Brandeis, the beloved brother, and his entire family stood aloof from the movement, as did the Goldmarks. In the Justice's own household only Susan [one of his two daughters] became a Zionist." But Brandeis always enjoyed a lonely and difficult eminence. Did his new interest stem from deep idealism? Was it the final burning of the Boston bridges? Did he sniff another unequal struggle?

He had first come in touch with the Jewish world in 1910, in the role of conciliator between the embattled employers and workers in the garment trade. "What struck me most," Brandeis said afterwards, "was that each side had a great capacity for placing themselves in the other fellow's shoes. . . . They argued, but they were willing to listen to argument. That set these people apart in my experience in labor disputes." In any case, the air was bracing. Benjamin Schlesinger, the union leader, was not slow to characterize Brandeis' preferential shop as "a union shop with honey." The dramatic Isaac Hourwich, given twenty-four hours by Brandeis to make up his mind on a vital issue,

remarked that the Czar's court-martial was in the habit of giving forty-eight. Involved in one way or another in that historic strike were the Socialist leader Morris Hillquit, the Socialist Congressman Meyer London, the Jewish leader and constitutional lawyer Louis Marshall, the banker and philanthropist Jacob Schiff, the civic and social worker Henry D. Moskowitz, the religious reformer Felix Adler—a veritable roll call of the most distinguished and powerful Jewish leaders. Here were men worth anyone's mettle.

Brandeis joined the Zionist movement in 1912, under the influence of de Haas. His Zionism seemed to be an extension of his liberalism. The liberalism whose unit was the individual had not succeeded in solving the Jewish question; a liberalism whose unit was the national group would. The transition was easy. If the individual has a right to life and freedom, why not the group? If the little fellow is entitled to the same rights as the rich and the aristocrat, why is not the little nationality entitled to the same right to an independent cultural and political life as the large nation? It remained only to show that the national group possessed that core of distinctiveness and worthwhileness which it was the aim of traditional liberalism to protect in protecting the individual. This was difficult, and still is. Brandeis said that the individuality of a people was "irrepressible," like that of a person, and let it go at that.

"The new nationalism adopted by America"—this was said in 1915, in the shadow of the European war and of America's growing interest in the national issues raised by it—"proclaims that each race or people, like each individual, has the right and duty to develop, and that only through such differentiated development will high civilization be attained." The Jews particularly have the duty to develop their character. For "what people in the world has shown a greater individuality than the Jews? Has any a nobler past? Does any possess common ideas better worth expressing? Has any marked traits worthier of development?"

TEN years earlier, Brandeis had uttered quite different views: "There is room here for men of any race, of any creed, of any condition of life, but not for Protestant-Americans, or Catholic-Americans, or Jewish-Americans, nor for German-Americans,

Irish-Americans, or Russian-Americans. This country demands that its sons and daughters whatever their race—however intense or diverse their religious connections—be politically merely American citizens. Habits of living or of thought which tend to keep alive differences of origin or to classify men according to their religious beliefs are inconsistent with the American ideal of brotherhood, and are disloyal."

But now the same ideal required that the Jew preserve his distinctive national tradition: "America's fundamental law seeks to make real the brotherhood of man. That brotherhood became the Jewish fundamental law more than twenty-five hundred years ago. America's insistent demand in the twentieth century is for social justice. That has also been the Jews' striving for ages." Now "... to be good Americans, we must be better Jews, and to be better Jews, we must become Zionists." Every Jew must stand up and be counted as a Zionist or "prove himself, wittingly or unwittingly, of the few who are against their own people."

The self-righteousness is no less evident than the inconsistency and less pardonable. But, in its context, his Zionism refracted the principle of national self-determination that the Wilson administration, with which he was always intimately associated, was promoting as one of the American stakes in the First World War. Brandeis was merely asking for the Jews what Wilson was asking for the Belgians, the Serbs, and the Czechs.

Two years after he became a Zionist the European war transferred the center of gravity of the movement to the United States. An unusual opportunity for leadership came to him. He was suddenly chosen to head the American movement and wielded a large influence until the followers of Chaim Weizmann defeated him in 1921. Thereafter he devoted himself to economic projects for the development of Palestine. His fall was a tragic event, for Zionist leadership represented apparently an attempt on his part to rise from economism to humanism. Yet his congenital approach to the world still governed. He insisted on hard work, careful investment, separation of donations from investments, economic construction rather than political propaganda, and always on sound budgeting and again sound budgeting. He said that "every person who wastes

a cent, whether it be in a cable, in a salary, or an unnecessary letter, is postponing, directly or indirectly, to perhaps a hundred times that extent, the achievement of our aim." De Haas reports that he installed time clocks in the Zionist offices, and assembled endless figures. No one who is familiar with the character and history of Zionism—and I am thinking of its faults as well as its virtues—will, under all the circumstances, be much surprised that his opponents pronounced Brandeis dead to the emotional and spiritual values of the movement. They may have felt like the Emperor of Austria to whom Richard Cobden, the famous free trader, in 1859, when Italy was demanding the province of Venetia, made the sensible and extraordinary suggestion that he sell the province for a goodly sum and balance his budget. It seems Franz Joseph was not in the real estate business, and he preferred to wage a costly war and lose Venetia. Both Cobden and Brandeis were betrayed by an overdose of common sense.

Here as elsewhere, it appears that the statesmanship of many an economic liberal was private management writ large. Cobden, who began life as a calico salesman, felt, in the words of his biographer, Sir John Morley, that "the affairs of a country or a nation come under the same laws of common sense and homely wisdom which govern the prosperity of a private concern." The statesmanship of Brandeis was much warmer and more social-minded; it was, instead, husbandry writ large. With him, economics returned to its original Greek sense of household management. The familiar familial virtues are all there. First comes duty, "which must be accepted as the dominant conception of life." Then comes work, "the best game that there is." Then follows a homely emphasis on personal effort and ingenuity. The mechanization of industry was one thing, but the mechanization of living quite another. Brandeis was repelled by gadgets and the kind of labor and time-saving devices that undermine the serious exertion and direct responsibility that for him spelled character. Over the whole, broods the conception of thrift and foresight and that anxiety which, as Thomas Hobbes observed, haunts men who are "over-provident." It is the "perpetual fear" that "always accompanies mankind in the ignorance of causes."

THE pattern of Brandeis' thought and the temper of his personality—but, alas, not his inward soul—are now, I think sufficiently clear. Having devoted himself to the external aspect of the social problem, and avoided its roots and its humanistic as distinguished from humanitarian implications, he was able to apply successfully the principles of a simple symmetry. Along with his liberal and utilitarian compeers of the last century, he helped to improve and reform a polity and a society that had been wrenched from aristocratic moorings to be cast upon a shore covered with jungle. It was only the ultimate question that these men failed to ask themselves, and that was whether a well-organized zoo is really better than a jungle. Whether we can afford to sacrifice profound though ineffable human values to seductive efficiencies is an aesthetic and moral question as much as it is an economic one, and we can blink it no longer. That is why Brandeis, gone but seven short years, already speaks to us in the muted tone of a distant age.

And yet, eventually a zoo, no matter how well organized, would not have suited Brandeis. The truth is that he was a divided man. His recognition of the need of great wealth for true independence did not square with his craving for a Spartan existence; each made the other illogical. His philosophy of scientific management and business and industrial engineering clashed with his craving for unmechanized and strenuous personal living. His mind inclined to order and his heart panted for struggle.

Brandeis resolved these paradoxes simply, as strong men do. He gave his passions to his career and his thought to his country. The career is singular and romantic, his thought an indistinguishable part of his age, almost an echo of it. The people from whom he sprang, the country in which he thrived, were absorbed by enterprise, building, exchanging, saving. His mercantile and industrious generation was alarmed by the wolf that comes down on the fold, the wastrels who toil not, neither do they spin, the crickets who laze away the summer and in the winter demand food of the ant. The answer to all these was watch, weigh, measure, count.

"Remember, O Stranger," Louis D. Brandeis exulted, "Arithmetic is the first of the sciences and the mother of safety."